

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
The Future of Media and Information
Needs of Communities in a Digital Age

GN Docket No. 10-25]

Comments of the City of Pikeville, KY

I. Introduction

The City of Pikeville, KY files these comments in support of the Comments of the Alliance for Community Media and the National Association of Telecommunications Officers and Advisors and to congratulate the Federal Communications Commission (“Commission”) for recognizing that Public, Educational and Governmental (“PEG” or “public access”) channels must be part of any discussion on the future of media and information needs of communities in a digital age.

In 2010, the City of Pikeville, KY and the Pike County Fiscal Court jointly created, PikeTV--a new government access cable channel. PikeTV will serve the governments of Pikeville and Pike County, the Pike County school system, Pikeville Independent School System, Pikeville Medical Center, Pikeville College and the Pikeville Main Street Program. PikeTV will offer quality government and educational programming on two cable television systems serving the citizens of Pikeville and Pike County. The channel will also serve as an instructional component and service learning opportunity within Pikeville College’s communication program curriculum. Pikeville College plans to expand its communication program offerings to include most, if not all, of the skill sets required in the video and radio communication fields. As part of the college’s education

curriculum, it is anticipated that the students will produce many of the programs which will be presented on PikeTV.

PikeTV fills unique community needs such as providing local news, sports and weather; expanding remote learning to rural areas of Eastern Kentucky; and providing learning opportunities in the field of video communications. Unless the Commission actively encourages development of public access, there is no guarantee that public access will remain in our future. In these comments we will answer the specific questions posed in Question 27 of the Public Notice regarding PEG.

II. Summary of Challenges

PEG is currently facing significant challenges that include but are not limited to:

- Operators abusing state franchise legislation to limit or sunset traditional sources of PEG support, resulting in PEG centers closing across the nation;
 - Operators employing state franchise laws to limit or sunset the availability of PEG channels, resulting in community voices being silenced;
 - Operators refusing to treat PEG channels in the same way they treat local broadcast channels, resulting in the loss of audience and shared community communications.
- Among the practices that have made it more difficult for consumers to find and view PEG channels are: operators that move channels them to less desirable channel locations, operators that require consumers to obtain additional equipment to view PEG channels, or operators that aggregate PEG channels on a technically deficient video stream, which lacks the functionality of commercial channels; and

- The Commission's delay in addressing a number of PEG community petitions for declaratory rulings to restrict the above complained of industry practices.

The Commission must understand that its inaction as much as the abusive actions of others is jeopardizing the future of community programming. The Commission was once the champion of community programming, and we hope that this docket signals the Commission's return to that role.

III. Responses to Specific PEG Questions Posed by the Commission:

The City of Pikeville, KY offers the following answers to the specific questions outlined in the FCC's Public Notice.

A. PEG channels are being used to effectively provide useful news and information to our community, but are threatened by industry practices and naïve state franchising legislation.

PikeTV was formed to provide local news, sports and weather; expand remote learning to rural areas of Eastern Kentucky; and provide learning opportunities in the field of video communications. Clearly, the PEG in City of Pikeville, KY is being used effectively in our community. Because PikeTV is programmed by the local community, the City of Pikeville, KY would answer the Commission's inquiry whether "[PEG] channels [are] being used as effectively as possible for the provision of useful news and information to communities" in the affirmative.

The City of Pikeville appreciates that programming could always be more effective if more of the population involves itself in the programming decisions. More efforts could be made in this regard if programmers were assured funding and our channels were not subject to industry efforts to marginalize our programming, for example by moving our channel around, requiring consumers to purchase/lease equipment to see our channel, or aggregating and streaming our channel with limited functionality.

B. PEG channels have evolved over time to retain their effectiveness and must continue to evolve to ensure effectiveness in the digital future

In response to the Commission's inquiry as to "How has the role of PEG channels changed over time, and how could their effectiveness be improved?" The City of Pikeville, KY offers the following:

In 2010, the City of Pikeville, KY and the Pike County Fiscal Court jointly created, PikeTV--a new government access cable channel. PikeTV will serve the governments of Pikeville and Pike County, the Pike County school system, Pikeville Independent School System, Pikeville Medical Center, Pikeville College and the Pikeville Main Street Program. This is a very exciting joint venture which will pool the community's resources to create high quality local cable access programming.

PEG channels and PEG operators have evolved to adapt to meet the needs and interests of the local community. Prior to the formation of PikeTV in 2010, government access television in Pikeville consisted of sporadic showings of taped public meetings. Now, PikeTV is set to provide to a vibrant local news, sports and weather coverage; remote learning to rural areas of Eastern Kentucky; and learning opportunities in the field of video communications.

It is not just our programming that has changed, our very operations have changed. The bottom line on all these changes is that our PEG programming and PEG operations have evolved to ensure that they remain relevant in the life of our community.

C. Operators have employed statewide franchising regimes to negatively impact the number, composition and funding of PEG channels.

Laws imposing statewide franchising regimes have been devastating to PEG channels and PEG Centers. Some state franchising laws limit PEG channels to the maintenance of current channels regardless of future community needs or technological advancements. The worst state franchising laws sunset or outright eliminate PEG channels and PEG funding support.

In those states that preserve the number of PEG channels, the funding for PEG operations has typically been cut dramatically. And where PEG funding is available, the options that local franchising provided to use funds for operations by mutual consent no longer exists in light of the definitions outlined in the Commission's Section 621 order.

In Kentucky, KRS 136.660 provides that as of January 1, 2006, communities in Kentucky may not require payments or in-kind property or services in cable franchises. KRS 136.660(1) provides that, except as provided in KRS 136.660(3)¹, every political subdivision shall be

¹ KRS 136.660(3) states that the prohibitions in KRS 136.660 shall not apply to:

(a) Ad valorem taxes levied under KRS 132.020;

(b) Emergency telephone surcharges;

(c) Surety bonds;

(d) In-kind payments of property or services provided under contracts or agreements in existence prior to January 1, 2006;

(e) Letters of credit designed to protect against damages to public rights-of-way for violations of regulatory requirements;

(f) Permit or inspection fees of general applicability that are:

1. Related to construction in the rights-of-way; and

2. Levied solely to defray the actual costs of administering the permitting process or inspection program;

(g) Pole attachment fees;

(h) Fees for the placement of antennas, towers, and other similar devices on publicly owned property that are imposed by a political subdivision pursuant to a written agreement;

prohibited from levying any franchise fee or tax on cable services, or collecting any franchise fee or tax from providers or purchasers of cable services; and enforcing any provision of any ordinance or agreement to the extent that the provision obligates a provider to pay to the political subdivision a franchise fee or tax.

KRS 136.660(2) defines "franchise fee or tax" as:

- (a) Any tax, charge, or fee, that is required by ordinance or agreement to be paid to a political subdivision by or through a provider, in its capacity as a provider, regardless of whether the tax, charge, or fee, is:
 - 1. Designated as a franchise fee, sales tax, excise tax, user fee, occupancy fee, subscriber charge, license fee, or otherwise;
 - 2. Measured by the amounts charged for services, the type or amount of equipment or facilities deployed, or otherwise;
 - 3. Intended as compensation for the use of public or private rights-of-way, the right to conduct business, or otherwise; or
 - 4. Permitted or required to be separately stated on the purchaser's bill; or
- (b) Any in-kind payment of property or services that is required to be furnished by a provider by any ordinance that is enacted or agreement that is entered into after January 1, 2006.

Thus, Kentucky law prohibits any in-kind payment of property or services for PEG access that is required to be furnished by a provider by any ordinance that is enacted or agreement that is entered into after January 1, 2006. KRS136.660(4) further states that if a political subdivision imposes or otherwise attempts to require the payment of a franchise fee or tax, the political subdivision shall not receive any share of the proceeds of the tax levied by KRS 136.604 or 136.616 for the period that the imposition or attempt occurs.

This has been a terrible blow to PEG funding in Kentucky!!!!

(i) Any charge or fee that is imposed on a provider by a political subdivision for the use of property or facilities owned by the political subdivision, if that provider is imposing similar charges or fees on other providers for the use of property or facilities owned or controlled by that provider;

(j) Any requirement by a political subdivision that a provider designate or set aside channel capacity for public, educational, or governmental use; or construct institutional networks; or provide similar services or facilities for public use and benefit that political subdivisions are specifically authorized to require by federal telecommunications laws; and

(k) Gross revenues utility taxes imposed under KRS 160.613 and 160.614.

**D. The digital age will offers opportunities to supplement PEG channels;
however these digital advances cannot supplant the need for PEG channels.**

Some argue that You Tube, the establishment of personal and public web pages and social websites, render traditional mass media unnecessary. These arguments are most often made by industry and their champions as a justification for escaping public obligations, and are a misrepresentation of the media landscape. It is interesting to note that while making these arguments, commercial interests are not abandoning the television platforms for the Internet. Commercial providers recognize that in an information economy, the ability to distribute by multiple means is the only way to serve the interests of your audience. What should community providers be denied their ability to continue to reach their audience in a format of the viewer's choosing?

New delivery platforms do not render traditional platforms obsolete. They allow consumers to choose the means by which they receive information – and to allow each individual consumer to make different choices at different times. The model is not displacement but “information everywhere.” Should a content provider or “speaker” be limited to one platform – be it the Internet, or mobile applications, or traditional broadcast channels – a significant portion of the audience will not be reached. Today, the most effective and perhaps only means to the poor and non-English speaking audiences, communities that rely heavily on public, educational and government programming is by means of the television. The same is true of public participation in PEG programming. If the only way to speak is via the Internet, groups who wish to reach a mass audience on an issue of local public importance may not be able to communicate

effectively. But the Commission is already well aware of this challenge following its hearings on localism.

Finally, community programming relies not only on programming outlets, but on programming centers. Even in the digital age there continues to be a strong need for public places where consumers can both receive and create appropriate local information that can be easily found.

PEG operations ensure that there is a well-funded “public space” that consumers can easily reach across all media.

PikeTV is set to provide to a vibrant local news, sports and weather coverage; remote learning to rural areas of Eastern Kentucky; and learning opportunities in the field of video communications for high school and college students.. These offering could not be successful on just an internet platform. Also, many in our community cannot afford high speed internet access, let alone a computer.

Therefore, the Commission must not accept the claims that alternative platforms reduce the need for PEG channels and PEG support. They are based on a misrepresentation of the nature of media. For while advances introduced by the digital age can offer additional platforms for sharing PEG programming, these additional platforms will never replace PEG channels so long as the television is the primary source of video communications in this nation.


IV. Conclusion

Public Educational and Governmental channels, such as PikeTV, must not only be part of any discussion on the future of media and information needs of communities in a digital age, PEG

must be a part of the digital age. The Commission must understand that that unless it actively encourages development of public access as it did in the 1970's, there is no guarantee that public access will remain in our future. And that would be a grave loss for communities around the country.

Respectfully Submitted;

4/26/10
Date



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